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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DOMINIC COBARRUVIAZ, ARLIN GOLDEN,  
JOHN REILLY, CHRISTOPHER RUSSELL,  
SUSAN BANNON, BATYA WEBER, AND  
DEREK WILLIAMS, INDIVIDUALLY AND  
ON BEHALF OF ALL OTHER SIMILARLY  
SITUATED EMPLOYEES;

Plaintiffs,

vs.

MAPLEBEAR, INC. dba INSTACART; AND  
DOES 1 through 100, inclusive

Defendants.

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MAPLEBEAR, INC. dba INSTACART

No. C 15-cv-00697 EMC

**[PROPOSED] STIPULATED ORDER  
REGARDING PROTOCOL FOR  
PRODUCTION OF DOCUMENTS  
AND ELECTRONICALLY STORED  
INFORMATION**

**Judge: Hon. Edward M. Chen**

1 Having met and conferred on issues concerning the format of and conditions under  
2 which documents and electronically stored information (“ESI”) are to be produced in this case,  
3 the parties, through their respective counsel, hereby enter into the following Stipulation:  
4

5 **GENERAL PROVISIONS**

6 1. The provisions set forth herein apply to the production of all documents,  
7 regardless of which party is seeking or producing the documents.  
8

9 2. Nothing in this Stipulation shall be interpreted to require disclosure of  
10 information protected by the attorney-client privilege, work-product doctrine, or any other  
11 applicable privilege or immunity. The parties do not waive any objections as to the production,  
12 discoverability, admissibility, or confidentiality of documents. All productions will be subject  
13 to any protective order that will be entered by the Court in this Action.  
14

15 3. Notwithstanding this Stipulation, the parties may separately agree to deviate  
16 from the protocols set forth herein as to specific documents or categories of documents  
17 provided that such agreement is memorialized in writing.

18 4. The parties shall make good faith efforts to comply with and resolve  
19 any differences concerning compliance with this Stipulation. If a producing party,  
20 notwithstanding their good faith efforts, cannot comply with any material aspect of this  
21 Stipulation or if compliance with such material aspect would be unreasonable, then within a  
22 reasonable time before the date of production, such producing party shall inform the  
23 requesting party in writing as to why compliance with the Stipulation is impossible or  
24 unreasonable. No party may seek relief from the Court concerning compliance with this  
25 Stipulation unless it has conferred with other affected parties.  
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1           5.       Nothing in the ESI Protocol shall affect, in any way, a producing party's right  
2 to seek reimbursement for costs associated with collection, review, and/or production of  
3 documents.

4  
5 **DEFINITIONS**

6           For the purpose of this Stipulation, the following definitions apply, unless a contrary  
7 use or limitation on a defined term is specified:

8           6.       “Metadata” means: (i) information embedded in a Native File that is not  
9 ordinarily viewable or printable from the application that generated, edited, or modified such  
10 Native File; and (ii) information generated automatically by the operation of a computer or  
11 other information technology system when a Native File is created, modified, transmitted,  
12 deleted, or otherwise manipulated by the user of such system. “Metadata” is a subset of ESI.

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14           7.       “Native File(s)” means ESI in the electronic format of the application in which  
15 such ESI is normally created, viewed, and/or modified. “Native Files” are a subset of ESI.

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17           8.       “Image File(s)” mean a representation of ESI produced by (i) converting a  
18 Native File into a standard image format capable of being viewed and printed on standard  
19 computer systems; or (ii) scanning a hard copy file into a standard image file capable of being  
20 viewed and printed on standard computer systems.

21           9.       “PDF” refers to Portable Document Format file type.

22           10.      “TIFF” refers to Tagged Image File Format file type.

23           11.      “Group IV TIFF” refers to a TIFF file type using Group IV compression format.

24           12.      “OCR” means Optical Character Recognition, and is the machine recognition of  
25 printed characters from Image Files or other non-searchable text contained in a document into  
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1 machine-encoded text so that the text can be indexed and searched for specific characters,  
2 words or phrases.

3 13. “Relativity” means Relativity document management software produced by  
4 kCura.

5 14. “Concordance” means Concordance document management software, version 8  
6 or higher, tailored to legal applications and distributed by LexisNexis.

7 15. “Extracted Text” means the electronic extraction of a Native File’s content that  
8 can be indexed and searched without OCR.

9 16. A “load file” is a file containing commands or information necessary to import  
10 coded, captured or Extracted data from ESI processing into a document management database,  
11 such as Relativity, and that defines the links between multiple records or document images.

12 **PRODUCTION OF HARD-COPY DOCUMENTS IN ELECTRONIC FORMAT**

13 17. **Production Format.** If a document exists only in paper form, then a party may  
14 produce that document in either paper or electronic form. If elected to be produced in  
15 electronic form, the Production of hard copy documents shall comply with the following  
16 requirements, with the exception that a party need not generate or provide OCR text for paper  
17 documents elected to be produced in electronic form.

18 a. **IMAGE FORMAT.** Documents that exist in hard copy format shall be  
19 scanned and produced as single-page black and white Group IV TIFFs, with a resolution of at  
20 least 300 dots per inch (dpi). Each TIFF should be named as the corresponding Bates number  
21 associated with that page. Original document orientation should be maintained (*i.e.*, portrait to  
22 portrait and landscape to landscape). Bates numbers, confidentiality designations, and  
23 redactions should be branded onto the TIFF images so that they appear when the document is  
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1 printed without obscuring any original content on the document. TIFF images should be  
2 provided in a self-identified “Images” folder.

3           **b. Database Load Files.** Documents should be provided with  
4 Relativity/Concordance-compatible image and data load files (*i.e.* .OPT and .DAT files) using  
5 the standard delimiters. Relativity/Concordance-compatible image and data load files should  
6 be provided in a self-identified “Data” folder. Each .DAT file should include links to (“text  
7 path”) multi-page (document level) text files in the .DAT file. The total number of documents  
8 referenced in a production’s data load file (.DAT) should match the total number of designated  
9 document breaks in the Image Load File(s) (.OPT) in the production. Additionally, the .OPT  
10 file should provide the beginning and ending Bates number of each document and the number  
11 of pages the document comprises. The .OPT file should include links (relative paths) to each  
12 image file within the .OPT file (document production). Attached as Exhibit A is a document  
13 containing additional information regarding the production specifications.

14           **c. Metadata and Coding Fields.** Absent special circumstances, hard copy  
15 documents should be produced with *at least* the following searchable information in  
16 accompanying delimited data files: (1) BEGDOC; (2) ENDDOC; (3) BEGATTACH  
17 (4) ENDATTACH (5) CUSTODIAN NAME. Custodians should be identified using the  
18 convention “last name, first name.” The Custodian NAME should remain the same for each  
19 unique custodian across each production. A full list of relevant fields is included in Exhibit A.

20           **d. Bates Numbering.** Each TIFF image should be assigned a Bates number  
21 that: (1) is unique across the entire document production; (2) maintains a constant length across  
22 the entire production (*i.e.*, “padded” with leading zeroes to the same number of characters); (3)  
23 contains no special characters or embedded spaces; and (4) is sequential within a given  
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document. If a Bates number or set of Bates numbers is skipped in a production, the producing party will so note in a cover letter or production log accompanying the production.

### **PRODUCTION OF ESI**

18. **Email.** The parties will work together to reduce the cost and size of email production with the goal of reducing the relative burden on the parties. While the parties have not yet reached an agreement on reasonable limits on custodians and search terms, the parties are aware of the importance the Court places on cooperation and commit to cooperate in good faith throughout the matter consistent with this Court's Guidelines for the Discovery of ESI. Should Instacart's motion to compel arbitration be denied, the parties intend to continue meeting and conferring on the proportionality of the discovery process and to attempt to agree upon reasonable limits on numbers of search terms and custodians.

### **19. PRODUCTION FORMAT:**

a. **IMAGE FORMAT.** Documents that exist electronically shall be produced in single-page black and white Group IV TIFFs, created with a resolution of at least 300 dots per inch (dpi). Each TIFF image should be named as the corresponding Bates number associated with that page. Original document orientation should be maintained (*i.e.*, portrait to portrait and landscape to landscape). Bates numbers, confidentiality designations, and redactions should be branded onto the TIFF images so that they appear when the document is printed. TIFF files should be provided in a self-identified "Images" folder.

b. **Metadata Fields and Processing.** Absent special circumstances, each of the metadata and coding fields set forth in Exhibit A that can be extracted from a document shall be produced for that document, to the extent already in existence and reasonably accessible. To the extent that metadata does not exist, is not reasonably

1 accessible or available, or would be unduly burdensome to collect, nothing in this ESI  
2 Protocol shall require any party to extract, capture, collect or produce such data. The  
3 parties are not obligated to populate manually any of the fields in Exhibit A if such fields  
4 cannot be extracted from a document, with the exception of the following: (1) BEGDOC;  
5 (2) ENDDOC; (3) BEGATTACH (4) ENDATTACH (5) CUSTODIAN NAME, (6)  
6 NATIVEPATH, AND (7) TEXTPATH fields (which may be populated by the party or the  
7 party's vendor). A full list of relevant fields is included in Exhibit A.  
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9           c.       **Extracted Text Files.** For each document, a multi-page (document  
10 level) text file should be provided along with its corresponding TIFF images and metadata.  
11 The file name of each extracted text file should be identical to that of the first image of its  
12 corresponding document, followed by .txt. File names should not contain any special  
13 characters or embedded spaces. The text of native files should be extracted directly from  
14 the native file, where it exists. However, if a document has been redacted, OCR of the  
15 redacted document will suffice in lieu of extracted text.  
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17           d.       **Database Load Files.** Database Load Files shall be provided in  
18 Relativity/Concordance-compatible image and load files. (*i.e.* .OPT and .DAT files) using  
19 standard delimiters. Relativity/Concordance-compatible image and data load files should be  
20 provided in a self-identified "Data" folder. Each .DAT file should include links to ("text path")  
21 multi-page (document level) text files in the .DAT file. A "NativePath" entry for each such  
22 native file should be included in the .DAT load file indicating the relative file path to  
23 each native file on the production media. The total number of documents referenced in a  
24 production's data load file (.DAT) should match the total number of designated document  
25 breaks in the Image Load File(s) (.OPT) in the production. Additionally, the OPT file should  
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1 provide the beginning and ending bates number of each document and the number of pages the  
2 document comprises. The .OPT file should include links (relative paths) to each image file  
3 within the .OPT file (document production). Attached as Exhibit A is a document containing  
4 additional information regarding the production specifications.  
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6 e. **Native Files.** ESI need not be produced in its native file format, unless  
7 (1) a requesting party can show a need for specific ESI in its native format and it would not be  
8 unreasonable, unduly burdensome, or expensive for the producing party to provide the ESI in  
9 this manner; (2) the ESI is in a multimedia form (e.g., sound, graphics, animation, or video); or  
10 (3) both parties agree otherwise in writing. Nothing shall prevent a Party from producing other  
11 materials in native format if the Party reasonably believes that production of such materials in  
12 native format would save time or expense, or that production in TIFF format would  
13 compromise the document's utility (e.g., large spreadsheets).  
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15 i. **Multimedia Files.** Multimedia files (e.g. .MOV files, .MPG files), and  
16 Spreadsheet files (e.g. Excel .XLS and .XLSX files, and Apple Numbers .NUMBERS files)  
17 shall be produced in native format except where produced in redacted form. Each such Native  
18 File should be produced with a corresponding single-page TIFF placeholder image, which  
19 will contain language indicating that the document is being produced as a Native File as  
20 well as any confidentiality designation being claimed by the producing party. Native  
21 Files should be named with the Bates number that is assigned to that specific record in the  
22 production. A "NativePath" entry for each such multimedia file should be included in the  
23 .DAT load file indicating the relative file path to each native file on the production media.  
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26 ii. **Presentation Files.** Presentation files (e.g. .PPT, .PPTX, and .KEY  
27 files) may be produced in TIFF image format provided the image files contain the speaker  
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1 presentation notes, or the speaker presentation notes are produced as part of the file's  
2 metadata included in the production.

3           iii.     **Requests for Other Native Files.** Other than as specifically set forth  
4 above, a producing party need not produce documents in native format. If good cause  
5 exists for the receiving party to request production of certain documents in native format,  
6 the receiving party may request production in native format by providing (1) a list of the  
7 Bates numbers of documents it requests to be produced in native format; and (2) an  
8 explanation of the need for reviewing such documents in native format. The producing  
9 party shall not unreasonably deny such requests, and shall produce the requested native  
10 files within 5 business days. Each document produced in response to such requests shall be  
11 produced with a "NativePath" entry in the .DAT load file indicating the relative file path to  
12 each Native File on the production media.

15           20.     **Structured Data.** The parties will work together to reduce the cost and size of  
16 the production of structured data with the goal of reducing the relative burden on the parties.  
17 As a general matter, reports generated from a database, whether maintained internally by the  
18 party or through a third party provider, shall be produced as reports in Microsoft Excel,  
19 Microsoft Access or ASCII delimited text format.

21           21.     **Color.** The receiving party may request production of specific documents in  
22 color by (1) providing a list of the Bates numbers of documents it requests to be produced in  
23 color format, and (2) an explanation of the need for reviewing such documents in color. The  
24 producing party shall not unreasonably deny such requests, and shall produce the requested  
25 native files within 5 business days, but need not make such production until the parties reach  
26 agreement regarding the additional costs associated with the production of documents in color.  
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1 Where such agreement is reached and documents are produced in color, they shall be provided  
2 in single page JPG format, created with a resolution of at least 300 dots per inch (dpi). Each  
3 JPG image should be named as the corresponding Bates number associated with that page.  
4 Original document orientation should be maintained (*i.e.*, portrait to portrait and landscape to  
5 landscape). Bates numbers, confidentiality designations, and redactions should be branded  
6 onto the JPG images so that they appear when the document is printed. JPG files should be  
7 provided in a self-identified “Images” folder  
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9       **22. Parent-Child Relationships.** Parent-child relationships (the association between  
10 e-mails and attachments) will be preserved through the production of a ProdBegAttach field  
11 contained in the .DAT load file. E-mail attachments will be consecutively produced with the  
12 parent email record.  
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14       **23. Duplicates.** Each party shall de-duplicate ESI on a global level (across all  
15 custodians) prior to production. The basis for such de-duplication shall be the MD5 or SHA1  
16 Hash values, or some other later agreed to de-duplication method such as full text de-  
17 duplication. For generating either the MD5 or SHA1 hash values for emails, the parties shall  
18 instruct their ESI processing vendors to take attachments into account for such hash value  
19 generation; an email shall only be considered a duplicate if the attachments are also the exact  
20 same as another email and its attachments. The identity of other custodians of de-duplicated  
21 items must be listed in the “Custodian” field (or otherwise provided in the delimited .DAT text  
22 file) of the copy of the record that is produced or in a “Dupe Custodians” field identifying each  
23 custodian to the email. If productions are made on a rolling basis, an overlay file shall be  
24 produced updating the “Dupe Custodians” field for prior produced documents.  
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1           24.     **Non-Degradation.** Documents shall not be converted from one form to another  
2 such that it becomes more difficult or burdensome to use the document or that removes or  
3 degrades the ability to search by electronic means documents that were originally searchable.

4           25.     **Documents That Cannot Be Imaged.** To the extent that a document cannot be  
5 imaged for technical reasons, a place-holder image will be produced which identifies the file by  
6 file name and file extension. The Metadata for these documents will be produced as otherwise  
7 required by this Stipulation. Examples of such files include, but are not limited to, corrupted  
8 files, container files or databases (e.g., .pst, .zip, .mdb, etc.), or proprietary software associated  
9 with a file.  
10

11           26.     **Inaccessible ESI.** Absent a showing of good cause, no party need restore any  
12 form of media upon which backup data is maintained, including but not limited to, backup  
13 tapes, disks, SAN, disaster recovery systems, and other forms of media, to comply with its  
14 discovery obligations in the present case. Additionally, absent a showing of good cause,  
15 voicemails, and unlogged instant messages are deemed not reasonably accessible and need not  
16 be collected and preserved.  
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18           27.     **Privilege Logs.** If any ESI is withheld pursuant to a claim of privilege, the  
19 responding party shall produce a log of privileged documents as required by FRCP 26(b)(5)(A).  
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21           28.     **Encryption.** To maximize the security of information in transit, any media on  
22 which documents are produced may be encrypted by the producing party. In such cases, the  
23 producing party shall transmit the encryption key or password to the requesting party, under  
24 separate cover, contemporaneously with sending the encrypted media.  
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26           29.     **Processing Third-Party Documents.** A party that issues a non-party subpoena  
27 (“Issuing Party”) shall include a copy of this ESI Protocol with the subpoena and request that  
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the non-party produce documents in accordance with the specifications set forth herein. The Issuing Party is responsible for producing to all other parties any documents obtained pursuant to a subpoena to any non-party. To the extent practical given the data volume, productions by a non-party should be produced by the Issuing Party to all other parties within seven (7) days of the non-party's production to the Issuing Party.

**So Stipulated:**

DATED: June 12, 2015

THE ARNS LAW FIRM

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DATED: June 12, 2015

KEKER & VAN NEST LLP

By: /S/ Rachael Meny  
Rachael Meny  
Benjamin Berkowitz  
Ryan Wong  
Attorneys for Defendant

**IT IS ORDERED** that the forgoing Agreement is approved

Dated: June 15, 2015

UNITED STATES

